


Judge Barbara J. Rothstein  
**CC TO JUDGE - DJ**

FILED \_\_\_\_\_ ENTERED \_\_\_\_\_

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DEC 11 2002 DJ

AT SEATTLE  
CLERK U.S. DISTRICT COURT

BY  WESTERN DISTRICT OF WASHINGTON  
DEPUTY

CR 01-00346 #00000042

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

PATRICK MICHAEL CUNNINGHAM,

Defendant.

No. CR-01-346 R

DEFENDANT'S SENTENCING  
MEMORANDUM

**NOTE FOR CALENDAR:**

December 17, 2002

COMES NOW Defendant Patrick Michael Cunningham, by and through his counsel,  
G Olaf Hansen of Magnuson Lowell, P.S., and provides his sentencing memorandum.

**FACTS OF CASE**

A detailed account of the facts of this matter was presented in a Pre-sentence Report dated October 4, 2002 by US Probation Officer Angela M. McGlynn. Defendant wants to clarify his position as to some of the facts presented about this matter. However, Defendant's position on his recount of the facts neither justifies his conduct nor denies his guilt in this matter.

Defendant's Sentencing Memorandum  
File No. 800.0098  
December 11, 2002

- 1 -

  
**MAGNUSON LOWELL, P.S.**  
Post Office Box 3037  
Redmond, WA 98073-3037  
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1 Defendant denies ever attempting to fire the .22 caliber pistol at the two Muslim  
2 worshipers, who approached him in the parking lot. His recollection was that they  
3 approached him as he was leaving the parking lot (and after he had poured gasoline on the  
4 vehicle.) He did pull the weapon on them, but only cocked the weapon. When he turned to  
5 walk away, he released the trigger hammer manually. He did this three times which would  
6 explain the markings on the bullets. When Defendant actually did fire the weapon, he shot  
7 in the air or ground but not towards the worshipers

8 The weapon was checked (which was also videotaped) in testing by the  
9 government. The test results concluded the gun was functioning properly with no  
10 mechanical problems. In fact, the gun did *not* misfire once in lab testing. Defendant does  
11 not dispute that the worshipers believed they were being fired upon. He did point the  
12 weapon at them while he was attempting to leave the area. He did cock his weapon. And it  
13 could have been perceived that he was attempting to fire his weapon at them. However, the  
14 government's own evidence indicates that this gun was not capable of misfiring.

15 In regards to the blood alcohol level being calculated at .14, evidence concludes that  
16 this level is a very low estimate to the Defendant's level at the time of the offense.  
17 According to Dr. Wise, his own calculations were that the level was over .20. Defendant's  
18 calculations place near .20. The police took a blood test two hours after the Defendant  
19 crashed his vehicle into a pole. Regardless of the specific number, Defendant was extremely  
20 intoxicated. With this intoxication, he wrongly believed there was a terrorist cell located at  
21 the Idriss Mosque. He wanted to draw attention to this by burning a vehicle near the  
22 mosque. Defendant's intoxication is not a defense or justification to his actions. However,  
23 it is a fact.

**EDUCATION RECORD**

Attached as Exhibit 1 is a copy of Defendant's High School Equivalency Diploma for the record. Also attached as Exhibit 2 is a copy of Defendant's quarterly report from the University of Washington dated June 17, 1977. Defendant has requested transcripts for 1978 and 1979 to place in the record but do not have them at this time.

**EMPLOYMENT RECORD**

Defendant clarifies that when he was working for Pacific Cabulance, he would transport wheelchair clients. He had quit his job days before his arrest due to dispute with the company. He refused to transport clients with a vehicle not fit to drive. At that point, he did not feel comfortable with the company who did not take into consideration who they were transporting.

In regards to Spring Hill Marriott, the dispute between Defendant and the manager was over the towing of a guest vehicle. The manager had ordered Defendant to call to tow a vehicle on the lot. It turned out to be a guest vehicle. After it was discovered that the vehicle was improperly towed, the manager wanted Defendant to split the costs of having the vehicle towed and returned. Defendant refused.

In regards to the Hilton Hotel in Bellevue, the address is 100 - 112<sup>th</sup> Ave NE, Bellevue for verification.

**SENTENCING RECOMMENDATIONS**

Defendant is asking the Court for a lighter sentence than recommended by US Probation. Defendant has freely admitted his actions and does not justify that his actions were proper. There is virtually no threat that the Defendant would repeat his actions. The Government's psychologist shares this opinion after their own evaluation of Defendant's

1 mental capacity. Furthermore, his letters to the victim and the mosque are both remorseful  
2 and honest. Defendant recognizes that the Court is limited in reducing the weapon  
3 enhancement as part of the sentence. However, the Defendant is requesting a suspension of  
4 most of the sentence regarding the guilty plea to attempted obstruction of free exercise of  
5 religious beliefs.

6 In addition, the Defendant is requesting a recommendation that he be sent to the  
7 correction facility in Oregon in Sheridan, OR. Although the ultimate decision is with the  
8 Department of Corrections, a recommendation by this Court would certainly help. The basis  
9 for this request is that his wife would be able to visit more regularly as well as other family  
10 members.

11 Defendant is also requesting to have time served, including the two weeks the  
12 Defendant was incarcerated by the State of Washington. Defendant has been incarcerated  
13 since September 13, 2001 under state charges until the federal government on September 28,  
14 2001 indicted him. He has never posted bail for his release.

15 Defendant also intends to publicly apologize to both the mosque and individuals for  
16 his actions. As a result of his actions, Defendant will serve several more months after  
17 sentencing despite his time served prior to sentencing. However, it should not be lost that  
18 the Defendant has a permanent limp and scars on his face as a daily reminder of his poor  
19 judgment on that faithful evening that will remain with him after he completes his  
20 incarceration. A physical reminder that is his fault, and his fault alone which he takes full  
21 responsibility.

1 Respectfully submitted this 11<sup>th</sup> day of December, 2002.

2 MAGNUSON LOWELL, P.S.

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5 G. Olaf Hansen

6 Attorney for Defendant  
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The  
University of the  
Education



State of New York  
Department

Be it known that

PATRICK M. CUNNINGHAM

*having satisfactorily completed the comprehensive examination requirements  
prescribed by the Commissioner of Education  
is, thereby, entitled to this*

**High School Equivalency Diploma**

In Witness Whereof the Regents issue this diploma no 2,791  
under seal of the University at Albany in the 1969 series

*James I. Allen, Jr.*

*President of the University  
and Commissioner of Education*

EXHIBIT: 1

## UNIVERSITY OF WASHINGTON

## QUARTERLY GRADE REPORT

SEATTLE, WASHINGTON 98195

GRADE SYSTEM	STUDENT NUMBER	CLASS	DATE ISSUED	QUARTER	YEAR	COLL	DEPT	DEGREE PROGRAM	PATHWAY	DES LVL	TYPE DEG
	7751208	6	06-17-77	SP	77	AA	001	00			
DOCUMENT SEQ FOR GRADE	DEPARTMENT	COURSE NO	TERM	COURSE TITLE	CREDITS	GRADE	GRADE PTS				
06137700360	CMU	150		THE MASS MEDIA	5.0	2.0	13.0				
06107700103	CMU	220		INTERCULTURAL CMU	5.0	2.0	13.0				
OTHER CREDITS ALLOWED	TOTAL UW CREDITS EARNED	TOTAL UW GRADED CREDITS ATTEMPTED	UW CUMULATIVE GRADE POINTS	UW CUM G P A	QUARTER CREDITS GRADED	QUARTER GRADE POINTS	QUARTER G P A				
.0	10.0	10.0	26.0	2.00	10.0	27.0	2.60				

SEE REVERSE SIDE FOR EXPLANATION OF GRADE SYMBOLS

5 PEREMPTORY DROPS AVAILABLE

PATRICK MICHAEL CUNNINGHAM  
 15 COMSTOCK ST  
 SEATTLE  
 WA 98109

ANY INQUIRIES CONCERNING THIS GRADE REPORT  
 SHOULD BE MADE NO LATER THAN THE LAST DAY  
 OF YOUR NEXT QUARTER AND IN NO CASE AFTER  
 A TWO YEAR LAPSE

1)

EXHIBIT: 2